



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Mr. Robert M. Allibon
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2005-02948

Dear Mr. Allibon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221560.

The Corinth Police Department (the "department"), which you represent, received a request for five categories of information relating to the requestor and another named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We also have considered the correspondence that we received from the Denton County Criminal District Attorney's Office (the "district attorney"). See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. You raise section 552.101 in conjunction with section 261.201 of the Family Code. This section provides in part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that most of the submitted information consists of files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. Thus, that information, which we have marked, falls within the scope of section 261.201 of the Family Code. You do not indicate that the department has adopted any rule that would permit the release of the marked information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law. *See also* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Furthermore, because section 261.201(a) encompasses all “files, reports, records, communications, and working papers” that are related to an investigation of alleged child abuse or neglect, the department must not release front page information in such cases.

Next, we address section 552.108. This section excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you state that the rest of the submitted information relates to a pending criminal case. Furthermore, the district attorney asserts that release of the remaining information would interfere with a pending criminal investigation and potential prosecution. Based on these representations, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108(a)(1).

In summary: (1) the department must withhold the marked information under section 552.101 in conjunction with section 261.201 of the Family Code; and (2) except for the basic information that must be released under section 552.108(c), the department may withhold the rest of the submitted information under section 552.108(a)(1). As we are able to make these determinations, we need not address section 552.103.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

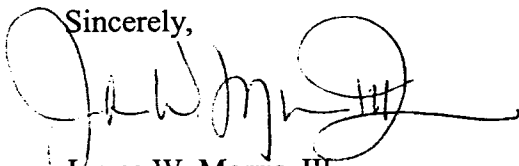
¹We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JWM', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 221560

Enc: Submitted documents

c: Mr. Michael Lovell
3702 Frankford Road #15201
Dallas, Texas 75287
(w/o enclosures)